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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 LORENZO SANTIAGO SALAS,

10 Plaintiff,

11 v.

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13 PPG ARCHITECTURAL FINISHES, INC., a  
14 Delaware Corporation, et al.,

15 Defendants.

Case No. C17-1787RSM

ORDER DENYING DEFENDANTS'

MOTION FOR SUMMARY JUDGMENT

16 **I. INTRODUCTION**

17 This matter comes before the Court on Defendants PPG Architectural Finishes, Inc.  
18 and Shield Packaging of California, Inc.'s Motion for Summary Judgment. Dkt. #42. Plaintiff  
19 Lorenzo Santiago Salas opposes. Dkt. #46.

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21 **II. BACKGROUND**

22 A full background of this case is unnecessary. This is a products-liability action in  
23 which the Plaintiff alleges a 20-ounce can of Homax Wall Texture with Orange Peel Finish  
24 exploded in his hands, causing injury to his eyes. *See* Dkt. #19 at 4. The explosion occurred  
25 after Plaintiff has submerged the can in a sink of water to warm the product and proceeded to  
26 shake the can. Defendants PPG and Shield Packaging both had some hand in designing,  
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1 manufacturing, and placing warning labels on this product. *See* Dkt. #43 at ¶¶ 2–4. The parties  
2 appear to agree on these basic facts. *See* Dkt. #42 at 3–4.

3 The instructions on the side of the can state “[f]or a finer texture, run can under warm  
4 water” and to “shake can vigorously for one minute.” Dkt. #44 at 28. These instructions are  
5 written in English and Spanish. *Id.* The label also warns “**DANGER!... CONTENTS**  
6 **UNDER PRESSURE**,” “[a]void prolonged exposure to sunlight and other heat sources that  
7 may cause bursting,” “[d]o not puncture, incinerate, burn or store above 120°F,” and “[w]ear  
8 safety glasses or goggles.” *Id.* (emphasis in original). Despite other portions of the label being  
9 in both languages, these warnings are in English and are not repeated in Spanish. *Id.*

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11 Plaintiff Salas had been using this product continuously as part of his job for the last  
12 seven years. He regularly warmed the product in water in a sink. On two prior occasions, the  
13 can had exploded in the sink without harming him, although on one occasion it had damaged a  
14 cabinet. *See* Dkt. #45 at 9–10.

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16 Plaintiff brings a claim under Washington’s Product Liability Act, RCW 7.72 et seq.  
17 against the manufacturers of Homax: PPG Architectural Finishes and Shield Packaging. Dkt.  
18 #19. Plaintiff alleges, *inter alia*, that the can was not reasonably safe in design and  
19 construction, that it could more easily explode than an ordinary consumer would have  
20 understood, and that the can had inadequate warnings and instructions regarding the risk of  
21 explosion and resulting harm. *Id.* at 5–6 (citing RCW 7.72.030).

### 22 23 24 **III. DISCUSSION**

#### 25 **A. Legal Standard for Summary Judgment**

26 Summary judgment is appropriate where “the movant shows that there is no genuine  
27 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.  
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1 R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). Material facts are  
2 those which might affect the outcome of the suit under governing law. *Anderson*, 477 U.S. at  
3 248. In ruling on summary judgment, a court does not weigh evidence to determine the truth of  
4 the matter, but “only determine[s] whether there is a genuine issue for trial.” *Crane v. Conoco,*  
5 *Inc.*, 41 F.3d 547, 549 (9th Cir. 1994) (citing *Federal Deposit Ins. Corp. v. O’Melveny &*  
6 *Meyers*, 969 F.2d 744, 747 (9th Cir. 1992)).

8 On a motion for summary judgment, the court views the evidence and draws inferences  
9 in the light most favorable to the non-moving party. *Anderson*, 477 U.S. at 255; *Sullivan v. U.S.*  
10 *Dep’t of the Navy*, 365 F.3d 827, 832 (9th Cir. 2004). The Court must draw all reasonable  
11 inferences in favor of the non-moving party. *See O’Melveny & Meyers*, 969 F.2d at 747, *rev’d*  
12 *on other grounds*, 512 U.S. 79 (1994). However, the nonmoving party must make a “sufficient  
13 showing on an essential element of her case with respect to which she has the burden of proof”  
14 to survive summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

#### 16 **B. Issues Raised Other than Summary Judgment**

18 As an initial matter, Defendants appear to raise several issues other than summary  
19 judgment in this Motion. Defendants attack the sufficiency of Plaintiff’s pleadings, citing  
20 *Ashcroft v. Iqbal*, 556, U.S. 662 (2009). Dkt. #42 at 3. However, Defendants cannot seek relief  
21 under Rule 12(b)(6), having already answered the Complaint. *See* Fed. R. Civ. P. 12(b), Dkts.  
22 #21 and #25.

24 Defendants also seek discovery sanctions against Plaintiff for “willfully conceal[ing]  
25 the physical evidence in this case...” Dkt. #42 at 3. Specifically, Defendants request the  
26 Court: prohibit Plaintiff from using the spray can, “any evidence derived from the can,” and  
27 certain photographs at trial; decree that the can’s design, manufacture and warnings were not  
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1 defective; decree that Plaintiff was not wearing safety glasses at the time of the accident; and  
2 consider other sanctions. *Id.* at 21. These are not issues typically raised within a motion for  
3 summary judgment, and would more typically be heard in a motion or motions in limine. The  
4 Court denies Defendants' request to declare at trial that Plaintiff was not wearing safety  
5 glasses, as the Court concludes such is tangential to the alleged discovery violation. The Court  
6 denies the request to declare that the can's design, manufacture, and warnings were not  
7 defective, as that is essentially the ultimate issue in this case and too severe a sanction for the  
8 alleged discovery violation. The remaining requests are properly briefed and addressed in a  
9 motion or motions in limine and will be deferred for now.

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11 All other disputes between the parties as to evidence can be raised in motions in limine,  
12 and may be irrelevant given the following rulings of the Court.

### 13 **C. Genuine Disputes of Material Fact Preclude Summary Judgment**

14 The Court need not address every fact and legal contention raised in briefing, because  
15 genuine disputes as to material facts permeate this case and preclude summary judgment on all  
16 of Plaintiff's claims.

17 Under Washington's Product Liability Act, RCW 7.72, for Plaintiff to succeed on a  
18 defective design claim he must show (1 a manufacturer's product (2 not reasonably safe as  
19 designed (3 caused harm to the Plaintiff. The second element can be met via the consumer  
20 expectation standard, *i.e.* a showing that the product was more dangerous than the ordinary  
21 consumer would expect. *See Pagnotta v. Beall Trailers of Oregon, Inc.*, 99 Wn. App. 28, 36,  
22 91 P.2d 728 (2000). The same standard is available for a defective construction claim or an  
23 inadequate warning claim. *See* Comments to WPI §§ 110.01 and 110.03.  
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1 Given the facts above, the ordinary consumer would not expect this can to explode  
2 causing injury after being submerged in warm water. The Court finds that if Plaintiff was  
3 wearing safety glasses and submerging the can in warm water below 120 degrees Fahrenheit,  
4 his claims can survive summary judgment. Plaintiff does not need expert testimony to support  
5 his claims. *See Pagnotta*, 99 Wn. App. at 39. Plaintiff's own testimony that he was wearing  
6 safety glasses<sup>1</sup> creates a question of fact; he does not need to produce the glasses or have other  
7 witnesses testify that he was wearing glasses to survive summary judgment. Any doubt as to  
8 the veracity of his testimony can be addressed on cross-examination. Plaintiff's testimony that  
9 he placed the can in warm water<sup>2</sup> could be interpreted by a reasonable juror as conforming to  
10 the instructions on the can, which state that the can must be kept below 120 degrees Fahrenheit.  
11 The Court *must* draw the reasonable inference in favor of Plaintiff that the "warm" water was  
12 below 120 degrees. The jury is free to reach their own conclusion as to this factual issue.

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15 Plaintiff's inadequate warnings claim similarly survives summary judgment, as it is a  
16 question of fact how the reasonable consumer would interpret the instructions and warnings  
17 advising the user to warm the can under water but not to expose the can to a temperature above  
18 120 degrees Fahrenheit. As Plaintiff states, "[i]f the jury agrees with defendants' position that  
19 the can exploded because plaintiff "put the wall texture can in warm/hot water" (Def. Mot., p.  
20 3), but disagrees that the can temperature exceeded 120F then the jury could reasonably find  
21 the warnings/instructions do not fairly convey the risks of the can reaching temperatures less  
22 than 120F." The Court agrees, and therefore will deny summary judgment on this claim as  
23 well.  
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28 <sup>1</sup> *See* Salas Deposition, Dkt. #45 at 13 ("...I was wearing safety glasses...").

<sup>2</sup> *See* Salas Deposition, Dkt. #45 at 12 ("I placed the can in warm water...").

1 None of Defendants' remaining arguments justify summary judgment. Of most concern  
2 to the Court is the issue of Plaintiff's awareness of the hazard. *See* Dkt. #42 at 12 (citing  
3 *Soproni v. Polygon Apartment Partners*, 137 Wn.2d 319, 326, 971 P.2d 500 (1999);  
4 *Thongchoom v. Graco Children's Products, Inc.*, 117 Wn. App. 299, 305-08, 71 P.3d 214  
5 (2003)). However, taking all the facts in light of Plaintiff as the nonmoving party, there is a  
6 genuine dispute as to Plaintiff's awareness of the hazard at issue here—a can exploding in his  
7 hand causing injury—versus the prior experiences of Plaintiff, where a can exploded while  
8 being submerged in hot water. This will remain as an issue for the jury to consider.

10 The Court notes that Plaintiff has stated that he is “not seeking putative [sic] damages  
11 and thus does not dispute defendants' position regarding such damages.” Dkt. #46 at 14 n.6.  
12 Punitive damages will not be available at trial.

#### 14 IV. CONCLUSION

15 Having reviewed the relevant briefing, attached declarations, and the remainder of the  
16 record, the Court hereby finds and ORDERS that Defendants' Motion for Summary Judgment  
17 (Dkt. #42) is DENIED. Punitive damages will not be available at trial.

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20 DATED this 4<sup>th</sup> day of January 2019.

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23 RICARDO S. MARTINEZ  
24 CHIEF UNITED STATES DISTRICT JUDGE  
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